



February 4, 2002

Ms. Dorothy Attwood
Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Mr. David Solomon
Chief
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: SBC Merger Conditions Examination, CC Docket No. 98-141

Dear Ms. Attwood and Mr. Solomon:

On behalf of Advanced TelCom Group, Inc. ("ATG"), I am writing to follow up on the information provided in the January 24, 2002 letter submitted to you by CompTel and ATG regarding SBC's failure to abide by the Merger Conditions (CC Docket No. 98-141)¹. As you know Condition 3 of the Merger Conditions required SBC to provide a promotional discount to telecommunications carriers that leased unbundled loops for the provision of advanced services. An independent auditor's examination and report² submitted to the Federal Communications Commission (the "Commission") on September 4, 2001 stated that SBC had failed to abide by Condition 3. Specifically, SBC did not provide the promotional discount to telecommunications carriers that leased unbundled IDSL loops for the provision of advanced services.

¹ Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules, CC Docket 98-141, *Memorandum Opinion and Order*, 14 FCC Rcd 14,712 (1999) ("Merger Order") and Attachment C ("Merger Conditions").

² Ernst & Young, LLP, Report of Independent Accountants (dated September 4, 2001) ("Merger Conditions Examination").

As stated in the January 24, 2002 letter, ATG has requested and been denied the promotional discount on IDSL unbundled loops continuously since July 2000 in both California and Nevada. Nineteen months after ATG's initial request and two months after SBC finally upgraded its OSS systems such that the promotional discount was no longer necessary, ATG's accounts were finally credited \$109,851.68. This credit reflected the promotional discount for leased IDSL unbundled loops that ATG should have been receiving over the previous 19 months.

It is ATG's strong opinion that but for the publication of the Merger Conditions Examination, which provided ATG additional leverage in its request for the promotional discount and, but for the previous imposition of fines imposed upon SBC for failure to comply with the Merger Conditions³, SBC would never have applied the promotional discount for unbundled IDSL loops as required in Condition 3 of the Merger Conditions. As it was, SBC did not actually correct its failure to comply with Condition 3 of the Merger Conditions until five months after its statement to the FCC, submitted along with the Merger Conditions Examinations on September 4, 2001, that SBC had taken corrective actions for all identified violations.⁴

As a result, ATG respectfully urges the Commission to continue to use its enforcement authority to impose appropriate sanctions for any violations of the Merger Conditions to deter future violations and to ensure that telecommunications carriers compete on a level playing field. Without aggressive oversight and enforcement by the Commission such a level playing field cannot exist.

Sincerely,

Kathleen M. Marshall
Executive Director, Regulatory & Public Policy
Advanced TelCom Group, Inc.
200 S. Virginia St., Ste. 103

CC: Carol Matthey
Anthony Dale
Mark Stone
Brad Berry
Radhika Karmarkar

³ *In the Matter of SBC Communications, Inc. Apparent Liability for Forfeiture*, File No. EB-00-IH-0326a, released May 24, 2001. ("May 2001 Forfeiture Order") This forfeiture was based on an earlier audit of SBC's collocation practices, which covered the period October 8, 1999 through June 8, 2000. See Ernst & Young LLP, *Report of Independent Accountants*, August 8, 2000. ("Collocation Examination")

⁴ ⁴ Report of Management on Compliance With the Merger Conditions, September 4, 2001, page 3.